IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.48/1989.
(Parsan Chand Jhambar Vs. M/s Dhanraj Madan Lal & Others)

DATE OF JUDGMENT : July 18th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. D.R. Loonkar for the appellant.
Mr. Vikas Balia for the respondents.

Reportable BY THE COURT :

This regular first appeal has been filed by the appellant challenging the judgment and decree dated 30.05.1988 passed by the learned Addl. District Judge No.1, Jodhpur in Civil Original Suit No.74/1980, whereby the learned trial Court has partly decreed the suit for recovery of principal amount of Re.0.01/- alongwith proportional cost of the suit as well as notice expenses of Rs.11/- and dismissed the suit of the plaintiff for interest.

According to facts of the case, it is disclosed in the memo of appeal that appellant plaintiff filed suit against the respondents for recovery of principal amount of 1 paisa, Rs.14,988.99 interest and Rs.11/- as cost of notice, in all, a sum of Rs.15,000/-. It is alleged in the plaint that the defendant firm asked for loan from Devraj, father of the plaintiff and on various dates the plaintiff deposited different sums by transfer entries through M/s Mahalaxmi Finance Corporation, Ahmedabad in the account of the defendant firm. Thus a total sum of Rs.52,934.01 was advanced as loan by the plaintiff to the defendant firm. The plaintiff alleged that it was agreed upon in between the parties that the said amount was payable alongwith interest at the rate of 1.25% per mensum. The plaintiff set up the case in the plaint that the defendant repaid a sum of Rs.52,934/- and amount of interest, Rs.14,988.99, notice expenses Rs.11/- and 1 paisa of principal amount, in all, a sum of Rs.15,000/- remained outstanding against the defendants due to plaintiff; and, accordingly, the plaintiff prayed for recovery of this amount from the defendants.

In the written-statement filed by the defendants, it is stated that amount of Rs.52,934.01 ps was not deposited by Devraj and was credited in the name of firm Parsan Chand Dev

Raj. It is also denied that payment was to be made at Kharia Mithapur. The amount of Rs.52,934/- was paid back at Ahmedabad. It is further stated that all payments were received through the firms managed by Devraj viz., (1) Devraj Chunnilal, (2) Prasanchand Devraj and (3) Prakashchandra Devraj and the said amounts were paid accordingly by the defendant. It is submitted in the written statement that the entire principal amount was repaid to the firms managed by Devraj.

In the written-statement, the defendants raised objection of limitation as well as jurisdiction of the Court at Jodhpur to try the suit because all such transactions had taken place at Ahmedabad and no cause of action arose at Kharia Mithapur (Bilara).

After filing of the written-statement, the learned trial Court framed the following seven issues :

1. "1. क्या नाबालिग वादी प्रसन्नचंद की ओर से उसके वली श्री देवराज से प्रतिवादी नं० 1 ने अर्जीदावा के पैरा नं 3 व 5 के अनुसार समय समय पर 44,379/93 पै०, रूपये 4056/08 पैसे व रूपये 4500/- विभिन्न फर्मों से उधार दिलवाये ?

2. क्या प्रसनचंद के वली श्री देवराज से धनराज ने यह इकरार किया कि ब्याज 1/25 पैसे फी सैंकड़ा महावार होगा व मूल धन व ब्याज की रकम खारिया मीठापुर में देय होगी ?

3. क्या वादी बाजार धारा एवं इन्टेरेस्ट एक्ट के प्रावधान के अनुसार रू० 1.25 फी सैंकड़ा से ब्याज पाने का अधिकारी है ?

4. क्या फर्म प्रसन्नचंद देवराज से प्रतिवादी ने पैरा नं० 3, 4 व 5 में वर्णित धनराशि उधार ली व उक्त फर्म की भागीदार श्री देवराज ने एक पैसा मुल धन का प्रतिवादीगण को छूट की ?

5. क्या दावा अवधी भीतर है ?

6. क्या प्रतिवादी रूपये 2000/- हर्जा खास पाने का अधिकारी है ?

7. दादरसी ?"

By way of the instant appeal, the appellant plaintiff is challenging the findings arrived at by the trial Court on issues No.2 and 3 only whereby the learned trial Court concluded upon adjudication that the plaintiff is not entitled for any interest because there was no agreement in between the parties to pay interest at the rate of 1.25% per mensum. The other issues were decided in favour of the plaintiff-appellant. The trial Court decreed the suit against the defendants for recovery of 1 paisa principal amount, expenses of the suit alongwith expenses of notice, Rs.11/-. As a result of the findings arrived at by the trial Court on issues No.2 and 3, the suit of the plaintiff for recovery of the amount of interest Rs.14,988.99 was dismissed. While the appellant is challenging the findings on issues No.2 and 3, in this case, the defendants have also filed cross-objections.

It is vehemently contended by learned counsel for the appellant that findings on issues No.2 and 3 are contrary to law and facts whereas, at the trial, the plaintiff-appellant proved its

case that there was oral agreement in between the parties to pay interest because, admittedly, the loan was advanced for business purposes by the plaintiff to the defendant. According to learned counsel for the appellant, the learned trial Court has committed error while deciding issues No.2 and 3 ignoring the documentary evidence on record produced vide Ex.-7, 8 and 9. It is contended that documents Ex.-7, 8 and 9 are statements of account of the firm wherein it is categorically stated that interest is calculable upon the loan-account. It is further argued that the learned trial Court has ignored Ex.-16 filed by the plaintiff before the trial Court by which the defendant firm has confirmed that the amount of interest is calculable and it is clearly mentioned in Ex.-16 that, "ब्याज जोड़ने की स्थीती में नहीं होने से ब्याज जोड़ा नहीं है।" Therefore, from the document Ex.-16, it is obvious that there was agreement in between the parties to pay interest upon the loan which is given by the plaintiff-appellant to respondent firm. It is further argued that the learned trial Court has not discussed all the documents filed by the plaintiff in the suit and ignored the notice dated 22.03.1979 sent to the defendant firm which was received by Dhanraj himself which is evident from the A.D. receipt Ex.-23. It is contended that from all these documents, the plaintiff proved its case and, therefore, the plaintiff is very

much entitled to interest but the claim of interest upon the loan was not ordered to be paid and the suit was dismissed erroneously by the trial Court. It is also argued that there is no reason whatsoever to disbelieve the documentary evidence vide Ex.-7, 8 and 9 as well as Ex.-16 filed by the plaintiff to prove its case for recovery of the amount of interest. The learned trial Court was under obligation to accept those documents and the finding was to be given that there was agreement to pay interest. It is contended that at the time of arriving at the finding the learned trial Court failed to consider that statement of defendant is not trustworthy and he is not reliable witness. It is contended that the judgment and decree under appeal require to be modified and findings arrived at by the trial Court on issues No.2 and 3 deserve to be set aside. It is prayed by learned counsel for the appellant that interest may also be decreed in favour of the appellant.

On the other hand, learned counsel for the defendant-respondents while raising the cross-objection argued that there was no agreement in between the parties to pay interest at the rate of 1.25% per month. It is argued that no bahi was produced on record. The so-called documents Ex.-7, 8 and 9 were prepared by the plaintiff himself but to support those

documents the original bahi was not produced before the Court. Therefore, the learned trial Court has rightly decided issues No.2 and 3 against the plaintiff as no agreement was arrived at in between the parties to pay interest upon the amount of loan. It is further contended by learned counsel for the respondents that in support of documents Ex.-7, 8 and 9 no other evidence was produced in which it can emerge that there was agreement to pay interest as claimed by the appellant.

It is true that while deciding issues No.2 and 3, the learned trial Court has not taken into account Ex.-16 as pointed out by learned counsel for the plaintiff-appellant but to prove the claim it is the duty of the plaintiff to place on record cogent and trustworthy evidence. It is argued that according to the appellant in Ex.-9 expenses of sending notice dated 22.03.1979 was included but it is strange that at the time of preparation of khata Ex.-9, as per the appellant himself, the interest was already calculated and communicated to the defendant while sending the notice in which the interest was calculated. If before preparation of Ex.-9 the interest was calculated as per the plaintiff himself then it was to be mentioned in the document Ex.-9 which is admittedly prepared after sending notice for recovery by the plaintiff-appellant. Therefore, non-mentioning

of interest in Ex.-9 by the appellant himself in his own document clearly speaks that either Ex.-9 was prepared falsely or only for the purpose of claiming interest the document is prepared after sending the notice.

It is argued on behalf of the respondents that from the defence evidence Ex.-A/1 it is obvious that no interest was payable. Likewise, two receipts which are admittedly made by the appellant himself dated 07.04.1978 for an amount of Rs.13,500/- and Rs.2,473/- it is clear that there is no mention with regard to outstanding of interest. Both these documents were not exhibited because they were admitted before the trial Court by the plaintiff. While showing other documents, it is contended that no other document except Ex.-7, 8 and 9 establishing that any interest was agreed upon in between the parties was filed. According to learned counsel for the respondents, the trial Court has rightly discredited the oral evidence of the plaintiff-appellant.

With regard to document Ex.-16, it is contended by learned counsel for the respondents that the language which is used in Ex.-16 cannot be termed as admission of the defendant that there was any agreement to pay interest, therefore, the learned trial Court rightly ignored the document because Ex.-16 by itself

is not significant of any agreement in between the parties for making payment of interest. In these circumstances, the finding arrived at by the learned trial Court on issues No.2 and 3 does not require any interference.

Raising the cross-objection, it is contended by learned counsel for the defendant-respondents that there is no jurisdiction of the Court at Jodhpur because all the transactions took place at Ahmadabad and there is no document on record except communication to invoke the jurisdiction of the Court at Jodhpur but the learned trial Court has given wrong finding with regard to entertaining the suit at Jodhpur. In support of the cross-objection, it is also contended that the loan was asked for from Devraj and he advanced the loan to the defendant through various firms managed by him including firm Prasanchand Devraj and, therefore, it can only mean that loan was advanced by Devraj and there was no privity of contract between the plaintiff and defendants for which the plaintiff can maintain the suit but the learned trial Court has seriously erred in ignoring this material aspect of the case. It is contended that the privily of contract existed between Devraj and defendant only and how the loan was arranged and from where the payments were made was internal arrangement of Devraj, his sons and the firms

managed by Devraj. It is submitted that re-payments were made as per instructions of Devraj and how the money was appropriated and how the money was transferred was internal affair of Devraj and cannot affect the privity of contract between Devraj and defendant. It is contended that management of his internal affairs by Devraj cannot confer any right on the third parties who were not privy to the contract, therefore, the suit filed by the present plaintiff-appellant is not maintainable. It is argued by learned counsel for the respondent-objectors that no decree could be passed in favour of the appellant-plaintiff and, therefore, in deciding issue No.1 in favour of the plaintiff the trial Court has committed serious error or law.

It is contended that at the time of filing the suit, the plaintiff Prasanchand was minor and there is no pleading in the plaint that any request was made to the plaintiff Prasanchand and all the firms through which the transfer entries in respect of loan advanced to the defendant were made are in Ahmadabad and the defendant firm is also at Ahmadabad. It has also not been alleged when Devraj was requested to advance the loan and whether while doing so he acted on behalf of his minor son, therefore, in the face of all these facts it is clear that no amount was advanced as loan by present plaintiff Prasanchand.

It is next contended that the trial Court committed error while deciding issue No.4 against the defendants. According to learned counsel for the respondents, looking to quantum of transaction no reasonable person would reach conclusion that 1 paisa is kept outstanding as principal amount. The amount of such negligible magnitude cannot be taken into account and is waived, therefore, it is obvious that the plaintiff filed the suit with ulterior motive and the trial Court has committed irregularity while deciding issue No.4 against the defendant. It is vehemently argued by learned counsel for the respondents that the veracity of the statement of Devraj before the Court is highly doubtful and from the evidence on record, circumstances of the case and probable course of human conduct it is established beyond doubt that no amount towards the principal remained outstanding. Therefore, obviously upon the grounds raised in the cross-objection, as per learned counsel for the defendants, there was no jurisdiction to try the suit with the Jodhpur Court and no transaction in between minor Prasanchand and defendant took place but all transactions were made by Devraj.

I have considered the rival submissions and carefully scanned the record of the case.

It may be observed that no appeal was filed by the

defendants against judgment under appeal challenging the findings of the trial Court on issues No.1, 4, 5, 6 and 7. Now, by way of filing the cross-objection, it is prayed that the findings on the aforesaid issues may be quashed.

According to record of the case, it is not disputed by the defendants that loan of Rs.52,934.01 was advanced. It is also not disputed that out of the said sum Rs.52,934/- was paid off and, therefore, in the loan account, admittedly 1 paisa remained outstanding against the defendants. So far as ground of jurisdiction is raised by the respondents, it is clear from the documentary evidence that communications were sent by the defendant at Kharia Mithapur (Bilara), therefore, the learned trial Court has rightly observed that there is jurisdiction of the Jodhpur Court to try the suit. In these facts and circumstances, there is no force in the contention of the respondent-defendants that the Court at Jodhpur lacked jurisdiction to try the suit. Similarly, no reply to the notice sent by the plaintiff for recovery was given by the defendant when the notice was given in the name of Prasanchand, therefore, at this stage the defendants cannot be permitted to raise objection to the maintainability of the suit on this ground that plaintiff Prasandchand cannot bring suit against the defendants. Moreover, in the communication

Ex.-10 the defendant himself mentioned, "खाता रो सतारो प्रसन्नचंद देवराज जी झामर", therefore, he himself mentioned the name of Prasanchand admitting the account and mentioned that the amount of Rs.52,934.00 ps was paid to Prasanchand Devraj. Therefore, the objection with regard to filing of the suit by Prasanchand minor cannot be taken by the defendants.

Consequently, the cross-objections raised by the defendant-respondents are rejected.

It may be observed that when the suit is filed before the Court seeking decree of money, it is incumbent upon the plaintiff that he should lead documentary evidence to prove the pleadings, more particularly, in the present suit the plaintiff claimed that interest was agreed upon in between the parties on the amount of loan advanced to the defendant; but, there is no specific documentary evidence on record. It may be noted that the documents Ex.-7, 8 and 9, much relied upon by the plaintiff, have not been proved by the plaintiff beyond doubt inasmuch as it is categorically observed by the trial Court in the impugned judgment that the veracity of these documents is not free from doubt because "bahis" were not produced in evidence. These documents by themselves do not prove any agreement nor it is anywhere mentioned that rate of 1.25% per month will be

payable by the defendants. Even it is not mentioned in documents Ex.-7, 8 and 9 when interest was agreed upon whereas it is admitted position on the record that loan amount was advanced through various transfer entries. There is force in the submission of learned counsel for the defendants that when expenses of notice was included in Ex.-9 how the plaintiff omitted to mention calculation of the amount of interest viz-a-viz different periods, therefore, in the absence of clear calculation of the amount alleged to be due to interest upon the amount of loan, these documents cannot be accepted as proof of agreement in between the parties for payment of interest. In these facts and circumstances, the learned trial Court rightly ignored the evidence of Ex.-7, 8 and 9 while adjudicating upon the issues No.2 and 3.

With regard to Ex.-16, it is very strange that when there is no acceptance of the defendant that he is liable to pay interest, then, in this regard, Ex.-16 is required to be seen to arrive at the conclusion whether any agreement was arrived at in between the parties to this effect. Obviously, the plaintiff has not produced any specific documentary evidence with regard to agreement for payment of interest.

It is emerging from the facts on record of the case that the

plaintiff-appellant knowingly well that there was no written agreement with regard to payment of interest upon the loan is repeatedly making prayer that after perusing the language of Ex.-7, 8 and 9 as well as Ex.-16 there was agreement in between the parties for payment of interest. It is a presumptuous claim and does not stand in law unless by evidence it is established that payment of interest at the rate agreed upon in between the parties was to be made under the agreement. This is, in fact, not the case of the plaintiff. The plaintiff brought suit claiming amount of interest with presumption that documents Ex.-7, 8 and 9 as well as Ex.-16 show that interest was payable and was not paid. The plaintiff was required to prove before the Court that there was sufficient evidence to establish that there was agreement in between the parties for payment of interest. As noted hereinabove, Ex.-7, 8 and 9 were prepared on the basis of bahis which were allegedly maintained by the plaintiff but, in the absence of original bahis, there is no question of awarding interest in favour of the plaintiff-appellant. Strangely enough, though the appellant claims that interest at the rate of 15% p.a. was payable but even there is no specific documentary evidence on record to prove that any interest was payable by the respondents at the rate of

15% per annum. It is also important to note here that for the first time while preparing Ex.-7, 8 and 9, it is contended by the plaintiff that he is entitled to the amount of interest and there was oral agreement for payment of interest. But, before that, at the time of re-payments, no communication for demand of interest was sent by the plaintiff to the respondents that whether the amounts have been deposited against the principal amount or against interest. This fact also gives strength to the conclusion that the claim of interest is only an after-thought and it is concocted claim. In these circumstances, there is no question of interference with the judgment rendered by the trial Court.

From the above discussion, it is clear that the findings arrived at by the learned trial Court on issues No.2 and 3 do not require any interference. The trial Court has rightly decreed the suit of the plaintiff for recovery of 1 paisa principal amount alongwith proportional cost of the suit and notice expenses.

Consequently, the appeal is dismissed. No order as to costs.

(Gopal Krishan Vyas) J.